

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Docket Number 038779/314194

**(filed with the Notice of Appeal)**

Application Number 10/586,106

Filed October 19, 2007

First Named Inventor Jae-Sub Song

Art Unit 2618

Examiner Daglawi, Amar A.

Applicants request review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) sheets are being provided.

Respectfully submitted,



Adam M. Kaplan

Registration No. 59,109

Date March 9, 2010**Customer No. 00826****ALSTON & BIRD LLP**

Bank of America Plaza

101 South Tryon Street, Suite 4000

Charlotte, NC 28280-4000

Tel Charlotte Office (704) 444-1000

Fax Charlotte Office (704) 444-1111

ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON March 9, 2010.

Attachment  
Reasons for Requesting Pre-Appeal Brief Request for Review

Claims 1-16 are pending in the present application and stand rejected. Claims 1-8 and 10-16 were rejected under 35 U.S.C. § 102(b) as being anticipated U.S. Patent No. 6,289,216 ("Koh"). Claim 9 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Koh in view of U.S. Patent No. 7,127,220 ("Abrams"). Applicants respectfully traverse the rejections. In light of the remarks and amendments presented below, applicants respectfully request reconsideration and allowance of all the pending claims, namely claims 1-16.

Applicants respectfully submit that Koh and the other documents of record, taken alone or in combination, fail to show or otherwise suggest all of the recitations of independent claims 1, 10 and 14. Applicants also respectfully submit that the Examiner has failed to meet the requisite burden of proof required to found some of the rejections on allegedly inherent disclosure of Koh and that Koh teaches away from applicants' claim recitations.

Independent claims 1 and 14 are directed to a system and method that monitor the status of a number of base stations. Claim 1 recites "a base station information database for storing identifiers of base stations to be monitored, and status information of the base stations ...." In addition, claim 1 recites, "a base station monitor for using the first and second measurement values to calculate factors of the base stations ...." Again, claim 1 recites the phrase "base stations," which is plural. Lastly, claim 1 recites, a measured result modifier for using status information of the base station information database corresponding to the base station identifier and modifying the calculated factors." Accordingly, claim 1 and counterpart method claim 14 include recitations that involve monitoring a plurality of base stations, using base station identifiers and status information.

Koh is generally directed to "measuring VSWR without employing any other device for testing a radio unit of a base station in a mobile communication system." Koh, col. 2, lines 27-29. To conduct testing in Koh, a test signal is generated by "a test terminal included in the base station ...." Koh, col. 2, lines 40-41. The base station controller, i.e., "BCP 300 ... performs the operation of measuring the VSWR ...." Koh, col. 5, lines 3-5.

The Examiner acknowledges in the final Office Action that *Koh's BCP performs the operation of measuring the VSWR at the base station*, but then alleges -- only two sentences later -- that applicant's claimed *remote device* "is equivalent to the BCP" of Koh. Office Action,

page 3. The Examiner seems to assert that the same component, namely the BCP, can be located both at the base station and remote from the base station. Applicants respectfully submit that it would be physically impossible for the BCP to be located both at the base station and remote from the base station. Moreover, Koh states the BCP is at the base station. See, e.g., Koh, col. 4, line 39 to col. 5, line 5.

Independent claim 10 recites, among other things: “a radio data module for transmitting in a radio data format to a remote device: [1] a base station identifier that corresponds with the antenna system, [2] the first measurement value, and [3] the second measurement value ....”

While applicants submit that Koh fails to show or suggest a radio data module that transmits [1], [2] and [3] *to a remote device*. As described above, the test terminal of Koh monitors only a single station, namely the station where the test terminal is being implemented, such that there is no need and, therefore, no teaching or suggestion that a base station identifier be transmitted, let alone transmitted to a remote device.

To the contrary, Koh explicitly states that it is directed to “measuring a voltage standing wave ratio (VSWR) *without another test device* ....” Koh, abstract (emphasis added). As such, Koh teaches away from applicants’ system of claim 10, which comprises “a radio data module for *transmitting* in a radio data format *to a remote device*” (emphasis added). Therefore, none of the cited documents, taken individually or in combination, teach or otherwise suggest these recitations of applicants’ independent claims 1, 10 and 14.

In summary, the final rejections seem to overlook key recitations of each independent claim. For example, the following independent claim recitations are not shown by Koh: “a base station information database for storing identifiers of base stations to be monitored, and status information of the base stations” or “a base station monitor for using the first and second measurement values to calculate factors of the base stations” recited by Claim 1; “a radio data module for transmitting ... [two measurement values and a base station identifier] to a remote device” recited by Claim 10; and “transmitting information including measurement values and measurement times ... in a radio data format to a monitoring server” recited by Claim 14.

In addition to and independent from the cited documents failing to show or suggest each claim recitation, the rejections can also be reversed because the Examiner has failed to meet the requisite burden of proof for founding some of the rejections on allegedly inherent disclosure of Koh. MPEP 2112.IV explains, “In relying upon the theory of inherency, the examiner must

provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.’ *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original).” In addition to base station identifiers not being discussed in Koh, there is no basis in fact or technical reasoning to include a base station identifier in Koh's system, which only tests a radio unit of one base station using a testing device implemented at the same base station.

Koh only discusses using a test terminal, integrated in each base station, to monitor a single base station. Accordingly, Koh fails to suggest at least the following claim 1 recitations: (1) “base station identifiers;” (2) “status information of the base stations;” (3) “a base station monitor for using first and second measurement values to calculate factors of the base stations” after the measurement values are received by “a radio communication module;” and (4) “a measured result modifier for using status information of the base station information database.” Claim 14 includes similar recitations. Indeed, the use of base station identifiers and the association of information with the base station identifiers as in claims 1 and 14 seems nonsensical or at least unnecessary in regards to a system such as Koh that monitors only a single base station.

Koh also teaches away from applicants’ claim recitations. Koh explicitly states that it is directed to “measuring a voltage standing wave ration (VSWR) *without another test device* ....” Koh, abstract. As such, Koh is not only directed to a completely different type of system and method than what is recited by applicants’ independent claims 1 and 14, but Koh also teaches away from applicants’ claimed system and method. Likewise, the background of applicants’ specification specifically distinguishes itself from systems like Koh, by pointing out some of the problems associated with systems like Koh. For example, “a large amount of cost is generated for installing a VSWR measurer in each base station, integrated management in consideration of the characteristics of the base station is difficult, and it is impossible to determine the antenna’s status in real-time.” Applicants’ specification, para. [15].

For at least the foregoing reasons, independent claims 1, 10 and 14 are allowable over Koh and, since claims 2-8, 11-13 and 15-16 depend either directly or indirectly from and necessarily include all of the recitations of one of independent claims 1, 10 and 14, the cited documents, whether taken alone or in combination, do not teach or otherwise suggest the system

and methods of claims 2-8, 11-13 and 15-16 for at least the same reasons as described above in conjunction with the respective independent claims.

Accordingly, for all the reasons stated above, applicants respectfully submit that the rejections of claims 1-29 should be reversed.